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Premier Environmental Solutions, LLC and Teamsters Local Union No. 838, affiliated with International Brotherhood of Teamsters. Case 14–CA–177481

August 16, 2017

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN MISCIMARRA AND MEMBERS
PEARCE AND MCFERRAN

The General Counsel seeks a default judgment in this case on the ground that Premier Environmental Solutions, LLC (the Respondent) has failed to file an answer to the compliance specification.

On January 23, 2017, the National Labor Relations Board issued a Decision and Order¹ that, among other things, ordered the Respondent to make whole employees for any losses suffered by reason of the Respondent's failure to provide contractually required health insurance benefits, including payment for consequential economic harm incurred, and to post at its Kansas City, Missouri facility a notice to employees for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted, and to distribute notices electronically, by email, posting on an intranet or internet site, and/or other electronic means if the Respondent customarily communicates with its employees by such means. On March 3, 2017, the United States Court of Appeals for the Sixth Circuit entered its judgment enforcing the remedial requirements of the Board's Order in full.²

A controversy having arisen over the amount of back-pay due and the Respondent's obligation to post signed copies of the notice to employees, on April 26, 2017, the Regional Director for Region 14 issued a compliance specification and notice of hearing alleging the amounts due under the Board's Order. The compliance specification further alleges that the Respondent has failed to comply with the required posting of the notice and that on or about March 20, 2017, the Respondent ceased operations at the Kansas City, Missouri facility. The compliance specification notified the Respondent that it should file an answer complying with the Board's Rules and Regulations by May 17, 2017. Although properly

served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter and email dated May 18, 2017, the Region advised the Respondent that no answer to the compliance specification had been received and that unless an answer was filed by May 24, 2017, a motion for default judgment would be filed. To date, the Respondent has failed to file an answer.

On May 25, 2017, the General Counsel filed with the Board a Motion to Transfer Proceeding to Board and for Default Judgment, with exhibits attached. On May 31, 2017, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response.³ The allegations in the motion and the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the motion for default judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and we grant the General Counsel's Motion for Default Judgment. Accordingly, we conclude that the make-whole expenses due to employees are as stated in the compliance specification, and we will order the Respondent to pay those amounts, plus interest accrued to the date of payment.⁴

³ It is well established that a respondent's cessation of operations does not excuse it from filing an answer to a complaint or a compliance specification. See, e.g., *OK Toilet & Towel Supply, Inc.*, 339 NLRB 1100, 1100–1101 (2003); *Dong-A Daily North America*, 332 NLRB 15, 15–16 (2000); *Holt Plastering, Inc.*, 317 NLRB 451, 451 (1995) (respondent was not excused from filing an answer to compliance specification, even though the respondent notified the Board it had "ceased operations and liquidated the plant facilities").

⁴ As indicated above, the compliance specification alleges that the Respondent has failed to comply with its obligations to post the notice to employees at its facility and to distribute the notice electronically to employees. By failing to file an answer, the Respondent has effectively

¹ Unpublished Decision and Order approving Formal Settlement Stipulation in case 14–CA–177481. On January 27, 2017, the Board issued an Erratum correcting the January 23, 2017 Order.

² No. 17-1089.

ORDER

The National Labor Relations Board orders that the Respondent, Premier Environmental Solutions, LLC, Kansas City, Missouri, its officers, agents, successors, and assigns, shall make affected employees whole by paying them the amounts following their names, plus interest accrued to the date of payment, as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

admitted that it has failed to do so. Nevertheless, we find it unnecessary in this proceeding to order the Respondent to take the actions described above, as those actions are included in our previous Order that has been enforced by the court of appeals. See *Bryan Adair Construction Co.*, 341 NLRB 247, 247 fn. 4 (2004).

In addition, the compliance specification seeks to require the Respondent, in lieu of physical posting of the notice to employees, to duplicate and mail a copy of the notice to all employees employed by the Respondent at any time since November 2, 2015, which is the date on which the unfair labor practices occurred. This remedy was not included in the Board's Order approving the parties' Formal Settlement Stipulation. Because the Board's Order has already been enforced by the Sixth Circuit, we no longer possess jurisdiction to modify that Order. See *Interstate Bakeries Corp.*, 360 NLRB 112, 112 fn. 4 (2014) (citing *Grinnell Fire Protection Systems Co.*, 337 NLRB 141, 142 (2001)).

<u>Claimant</u>	<u>Medical Expenses Owed</u>
Joseph James	\$3,798
Brian Luna	\$2,156
Darren Wilson	\$1,986
Total amount due:	\$7,940

Dated, Washington, D.C. August 16, 2017

Philip A. Miscimarra,	Chairman
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Mark Gaston Pearce,	Member
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Lauren McFerran,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD